

FILED

SEP 13 2007

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY Richard N. Goldsmith

BEFORE A HEARING OFFICER OF

THE SUPREME COURT OF ARIZONA

**IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,**

**DION C. WARE,
Bar No. 019357**

Respondent

File Nos 06-1022, 06-1589

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
RECOMMENDED SANCTION**

(Assigned to Hearing Officer 7I
Richard N. Goldsmith)

I recommend that Respondent, a no show in this process, be suspended for two
years

PROCEDURAL HISTORY

The State Bar filed a Complaint on April 25, 2007. Copies of the Complaint were
served on May 7, 2007, by certified mail – restricted delivery and by regular first class
mail to Respondent at the address of record provided by Respondent to the Membership
Records Department of the State Bar. The certified mailing was unclaimed and returned
to the State Bar. The first class mailing was returned to the State Bar as “undeliverable”
(Hearing Exhibit “7”)

Copies of the Complaint were also served on May 7, 2007, by certified mail –
restricted delivery and by regular first class mail to Respondent at an address believed to
be Respondent’s home address as provided by a State Bar Investigator. The certified
mailing was unclaimed and returned to the State Bar. (Hearing Exhibit “7”)

1
2 Respondent failed to answer the Complaint within the time frame set forth in the
3 Rules specifically, Rule 57, Ariz R.Sup Ct. On June 4, 2007, a Notice of Default was
4 filed. A Default was entered June 27, 2007.
5

6 By a Notice filed and mailed July 26, 2007, an aggravation and mitigation hearing
7 was noticed and set for August 3, 2007. Notice of the hearing was sent to Respondent at
8 his address of record. Respondent did not appear at the hearing and no counsel appeared
9 for Respondent.
10

11 **FACTS DEEMED ADMITTED**

12 The following facts alleged in the Complaint are now deemed admitted pursuant
13 to Rule 57(d), Ariz R.Sup Ct :

14 1 At all times relevant, Respondent was a lawyer licensed to practice law in
15 the State of Arizona having been first admitted to practice in Arizona on July 8, 1999
16

17 **Count One (File No. 06-1022)**

18 2 In October of 2005, Bernice Kay Rhoden hired Respondent to represent
19 her and her daughter in two matters.

20 3. The first matter was to place a lien on a piece of real property to secure a
21 loan Ms Rhoden and her daughter had given to the property owner and to take recovery
22 action on the loan itself.

23 4 The second matter was to remove a co-owner's name from a motor vehicle
24 title.
25

5 Ms. Rhoden paid Respondent a retainer of \$500.00.

1 6. Thereafter, Respondent failed to communicate with Ms. Rhoden and
2 ignored her demands for return of her documents.

3 7. After seven months of little or no communication from Respondent, Ms.
4 Rhoden informed Respondent that she was going to file a bar complaint
5

6 8 Respondent returned the motor vehicle title

7 9. Upon review of the motor vehicle title, Ms. Rhoden noticed that it was an
8 “and/or” title, whereby either owner could transfer title on the vehicle

9 10 After return of the motor vehicle title Respondent abandoned Ms
10 Rhoden’s cases.
11

12 11. Respondent failed to perfect the lien on the real property or take any other
13 action to recover Ms Rhoden’s money

14 12 Respondent failed to provide Ms. Rhoden with an accounting of the
15 \$500.00 retainer.

16 13. Respondent failed to refund all or part of the \$500.00 retainer to Ms.
17 Rhoden.
18

19 14. Respondent failed to accept or return any of Ms. Rhoden’s phone calls and
20 e-mail messages.

21 15 In a correspondence dated June 22, 2006, Ms. Rhoden submitted her
22 complaint against Respondent with the State Bar.

23 16 In a letter dated July 21, 2006, bar counsel sent Respondent a copy of Ms
24 Rhoden’s complaint and requested a response within 20 days.
25

1 17 The July 21, 2006, letter was sent to Respondent's address of record The
2 U S Postal Service returned the letter to the State Bar as undeliverable.

3 18 In a letter dated October 4, 2006, bar counsel sent Respondent a copy of
4 Ms. Rhoden's complaint and requested a response within 20 days.

5 19. The October 4, 2006, letter was sent to Respondent's address of record
6
7 The U.S. Postal Service returned the letter to the State Bar as undeliverable.

8 20 On or about November 27 and 28, 2006, bar counsel left voice mail
9 messages at Respondent's telephone number of record

10 21 Respondent failed to return bar counsel's phone messages.

11 22. In a letter dated December 11, 2006, bar counsel sent Respondent a copy of
12 Ms Rhoden's complaint via U S. Postal Service and by email to his address of record.
13 Respondent was given 20 days to respond to Ms. Rhoden's complaint. The U S Postal
14 Service returned the letter as undeliverable.

15 23 Respondent failed to respond to the emailed letter.

16 24. Respondent failed to provide competent and diligent representation to Ms.
17 Rhoden, in violation of Rule 42, Ariz.R.Sup.Ct., specifically, ERs 1 1 and 1.3.
18

19 25 Respondent failed to abide by Ms. Rhoden's decisions concerning the
20 objectives of the representation, in violation of Rule 42, Ariz R.Sup.Ct., specifically, ER
21 1 2.
22

23 26. Respondent failed to communicate and promptly comply with requests for
24 information from Ms Rhoden, in violation of rule 42, Ariz.R.Sup Ct , specifically, ER
25 1 4.

1 27. Respondent charged Ms Rhoden an unreasonable fee, in violation of Rule
2 42, Ariz R Sup.Ct , specifically, ER 1 5

3 28 Respondent failed to safeguard Ms Rhoden's property, in violation of rule
4 42, Ariz R.Sup.Ct., specifically, ER 1.15

5 29 Respondent engaged in conduct that was prejudicial to the administration
6 of justice, in violation of Rule 42, Ariz R.Sup.Ct., specifically ER 8.4(d).

7 30. Respondent failed to provide Ms. Rhoden with a timely written account of
8 the status of the \$500 00 retainer, in violation of Rule 43(d)(2), Ariz.R Sup Ct.

9 31 Respondent failed to provide the State Bar with a current street address,
10 telephone number, and any other post office address that he may use, in violation of Rule
11 32(c)(3).
12

13 32. Respondent failed to furnish information or respond promptly to an inquiry
14 or request form bar counsel, in violation of Rule 53(f), Ariz.R Sup.Ct.
15

16 33. Respondent's conduct in this count violated Rule 42, Ariz R Sup Ct.,
17 specifically ERs 1 1, 1 2, 1 3, 1 4, 1.5, 1.15 and 8.4(d), and Rules 32(c)(3), 43(d)(2) and
18 53(f), Ariz.R Sup Ct.
19

20 **Count Two (File No. 06-1589)**

21 34. In early 2005, Tina Ann Pace-Morell hired Respondent for two probate
22 matters the Estate of Christine Ann Pace, Ms. Pace-Morell's mother; and the Estate of
23 Raymond K Pace, Ms. Pace-Morell's grandfather

24 35 Ms Pace-Morell paid Respondent a retainer of \$3,000 00
25

1 36 On or about April 27, 2005, Letters of Personal Representative were filed
2 with the court in the Estate of Raymond K. Pace.

3 37 On or about June 15, 2005, Letters of Personal Representative were filed
4 with the court in the Estate of Christine Ann Pace.

5 38 From July 2006, through September 2006, Ms Pace-Morell tried to contact
6 Respondent many times by phone and e-mail. Respondent failed to return Ms Pace-
7 Morell's phone messages or e-mails.

8 39 From July 2006 through September 2006, Ms. Pace-Morell made several
9 personal visits to Respondent's office with no success in contacting Respondent.
10

11 40. Respondent failed to provide Ms. Pace-Morell with an accounting of the
12 \$3,000 00 retainer
13

14 41. Respondent failed to refund all or part of the \$3,000.00 retainer to Ms.
15 Pace-Morell

16 42 In a correspondence dated September 24, 2006, Ms Pace-Morell submitted
17 her complaint against Respondent with the State Bar.

18 43. Between September 28 and December 12, 2006, the State Bar's
19 Attorney/Consumer Assistance Program ("ACAP") attempted to make contact with
20 Respondent per the request of Ms. Pace-Morell ACAP left numerous voice mail
21 messages at his phone number of record
22

23 44 Respondent failed to return any of ACAP's phone messages.

24 45. On or about November 27 and 28, 2006, bar counsel left voice mail
25 messages at Respondent's telephone number of record

1 46. Respondent failed to return bar counsel's phone messages.

2 47. In letter dated December 12, 2006, bar counsel sent Respondent a copy of
3 Ms. Rhoden's complaint via U S Postal Service and by e-mail to his address of record.
4 Respondent was given 20 days to respond to Ms. Pace-Morell's complaint. The U S
5 Postal Service returned the letter as undeliverable.
6

7 48. Respondent failed to respond to the emailed letter.

8 49 Respondent failed to abide by Ms Pace-Morell's decisions concerning the
9 objectives of the representation, in violation of Rule 42, Ariz R Sup Ct., specifically, ER
10 1 2

11 50 Respondent failed to provide diligent representation to Ms Pace-Morell, in
12 violation of Rule 42, Ariz R Sup.Ct , specifically, ER 1.3.
13

14 51 Respondent failed to communicate and promptly comply with requests for
15 information from Ms. Pace-Morell, in violation of Rule 42, Ariz R Sup Ct., specifically,
16 ER 1 4

17 52. Respondent charged Ms. Pace-Morell an unreasonable fee, in violation of
18 Rule 42, Ariz.R.Sup Ct., specifically, ER 1 5
19

20 53. Respondent failed to safeguard Ms. Pace-Morell's property, in violation of
21 Rule 42, Ariz.R.Sup Ct , specifically, ER 1.15.

22 54. Respondent failed to expedite the probate of the estates consistent with the
23 interests of Ms. Pace-Morell, in violation of Rule 42, Ariz R Sup.Ct., specifically, ER
24 3 2.
25

1 55. Respondent engaged in conduct that was prejudicial to the administration
2 of justice, in violation of Rule 42, Ariz R.Sup.Ct., specifically, ER 8.4(d).

3 56 Respondent failed to provide Ms Pace-Morell with a timely written
4 account of the status of the \$3,000.00 retainer, in violation of Rule 43(d)(2),
5 Ariz R.Sup.Ct.
6

7 57. Respondent failed to provide the State Bar with a current street address,
8 telephone number, and any other post office address that he may use, in violation of Rule
9 32(c)(3), Ariz.R.Sup.Ct
10

11 58 Respondent failed to furnish information or respond promptly to an inquiry
12 or request from bar counsel, in violation of Rule 53(f), Ariz R Sup Ct

13 59 Respondent's conduct in this count violated Rule 42, Ariz.R.Sup.Ct ,
14 specifically ERs 1 2, 1.3, 1.4, 1.5, 1.15, 3 2 and 8 4(d), and Rules 32(c)(3), 43(d)(2) and
15 53(f), Ariz R.Sup.Ct.

16 **Additional Findings of Fact from Aggravation Mitigation Hearing**

17 60. On or about January 23, 2007, bar counsel requested investigative
18 assistance to locate Respondent and make personal contact Reporter's Transcript of
19 Proceedings dated August 3, 2007 (referred to as RT), page 28, line 6
20

21 61 On or about January 23, 24 and 25, 2007, a State Bar Investigator
22 ("Investigator") called Respondent's telephone number of record. A voice mail system
23 picked up indicating that Investigator had reached the Law Office of Dion Ware
24 Investigator left voice mail identifying himself and requesting a return phone call
25 Respondent failed to return the calls as requested. RT, page 28, line 13

1 62. On or about January 23, 2007, Investigator visited Respondent's address of
2 record. The suite was dark and locked. The State Bar's database lists an e-mail address
3 for Respondent at Pension Professionals, which is located in the same office building
4 Investigator visited Pensions Professionals and was informed that they had not employed
5 Respondent for about the last six to eight months, did not know where to find
6 Respondent or have a forwarding address for him. RT, page 28, line 24.

8 63 Upon further investigation Investigator located Respondent's home address
9 and a non-published telephone number attached to the home address. Investigator made
10 several attempts to contact Respondent via the non-published telephone number but was
11 unsuccessful, as the voice mail system was full. RT, page 29, line 11.

13 64 On or about January 26, 2007, Investigator conducted a drive by of
14 Respondent's home address. No personal contact was made but visual contact was made
15 of two vehicles at the home bearing Arizona license plates "LAW" and "GED2JD". RT,
16 page 29, line 16.

17 65. On two occasions between April 25 and May 7, 2007, a State Bar
18 Investigator attempted Service of Process of the Complaint at Respondent's home
19 address. On both occasions, Investigator was unable to make personal contact with
20 anyone at the residence though it is believed that someone was in the residence at the
21 time of the attempted Service of Process. RT, page 30, line 7.

23 **Count One (File No. 06-1022)**

24 66 As of the date of the aggravation mitigation hearing Ms. Rhoden has not
25 received a refund of the \$500.00 retainer paid to Respondent. RT, page 11, line 17.

67. This was the first experience Ms Rhoden has had with a lawyer RT, page 12, line 4.

68 Ms. Rhoden has subsequently contacted a paralegal and believes that she no longer needs the assistance of a lawyer. Mr Rhoden believes that she can hire a paralegal to file a lien on a piece of real property to secure a \$35,000 00, loan she had given to the property owner and to take action on the recovery of the loan. RT, pages 13 & 14.

Count Two (File No. 06-1589)

69 In early 2005, Ms. Pace-Morell hired Respondent and paid him a retainer
of \$5,000.00 RT, pages 18 & 19.

70. This is the first experience Ms. Pace-Morell has had with a lawyer that didn't turn out well. RT, page 26, line 3

71 Following the issuance of letters of personal representative to
Complainant, Respondent abandoned her two cases RT, page 19, line 7-page 22, line 1.

72. Ms. Pace-Morell has spent approximately \$150 00 in certified copy fees in an attempt to replace copies of original documents given to Respondent in 2005. RT, page 22, line 12.

73. Ms Pace-Morell is unable to complete the probate of the two estates without the assistance of a lawyer. RT, page 21, line 13

74. Ms. Pace-Morelle is unable to hire a new lawyer because Respondent has not refunded any part of the \$5,000.00 retainer she paid him in 2005. RT, page 21, line 9

1 75 As of the date of the aggravation mitigation hearing Ms Pace-Morell has
2 not received the requested original copies of documents in Respondent's possession and
3 has not received a refund of the \$5,000 00 retainer paid to him. RT, page 22, lines 5-16
4

5 CONCLUSIONS OF LAW

6 There is clear and convincing evidence that Respondent violated the following
7 rules of Professional conduct

8 **Count One (File No. 06-1022):** Rule 42, Ariz R.Sup.Ct , specifically ERs 1.1,
9 1.2, 1.3, 1.4, 1.5, 1.15 and 8 4(d), and Rules 32(c)(3), 43(d)(2) and 53(f), Ariz R Sup.Ct
10

11 **Count Two (File No. 06-1589):** Rule 42, Ariz.R Sup.Ct , specifically ERs 1.2,
12 1 3, 1.4, 1.5, 1 15, 3 2 and 8.4(d), and Rules 32(c)(3), 43(d)(2) and 53(f), Ariz R.Sup Ct.

13 ABA STANDARDS

14 The Supreme Court and the Disciplinary Commission consistently use the ABA
15 *Standards* to determine appropriate sanctions for attorney discipline. *See In re Clark*, 207
16 Ariz 414, 87 P.3d 827 (2004). The *Standards* are designed to promote consistency in
17 sanctions by identifying relevant factors the court should consider and then applying
18 these factors to situations in which lawyers have engaged in various types of misconduct.
19

20 *Standard 1.3, Commentary*

21 In determining an appropriate sanction, the Supreme Court and the Disciplinary
22 Commission consider the duty violated, the lawyer's mental state, the presence or
23 absence of actual or potential injury, and the existence of aggravating and mitigating
24 factors *In re Tarletz*, 163 Ariz 548, 554, 789 P.2d 1049, 1055 (1990), *Standard 3 0*
25

1 Given the conduct in this matter, it is appropriate to consider *Standards* 4.0,
2 (Violation of Duties Owed to the Client), 6.0 (Violations of Duties Owed to the Legal
3 System) and 7.0 (Violation of Duties Owed as a Professional).

4 4.1 Failure to Preserve the Client's Property

5 4.11 Disbarment is generally appropriate when a lawyer
6 knowingly converts client property and causes injury or potential injury to
7 a client.

8 4.12 Suspension is generally appropriate when a lawyer knows or
9 should know that he is dealing improperly with client property and causes
10 injury or potential injury to a client.

11 4.4 Lack of Diligence

12 4.41 Disbarment is generally appropriate when (a) a lawyer
13 abandons the practice and causes serious or potentially serious injury to a
14 client, or (b) a lawyer knowingly fails to perform services for a client and
15 causes serious or potentially serious injury to a client, or (c) a lawyer
engages in a pattern of neglect with respect to client matters and causes
serious or potentially serious injury to a client.

16 4.42 Suspension is generally appropriate when (a) a lawyer
17 knowingly fails to perform services for a client and causes injury or
18 potential injury to a client, or (b) a lawyer engages in a pattern of neglect
and causes injury or potential injury to a client

19 6.2 Abuse of the Legal Process

20 6.21 Disbarment is generally appropriate when a lawyer
21 knowingly violates a court order or rule with the intent to obtain a benefit
22 for the lawyer or another, and causes serious injury or potentially serious
injury to a party or causes serious or potentially serious interference with
the legal proceeding.

23 6.22 Suspension is generally appropriate when a lawyer knows
24 that he or she is violating a court order or rule, and causes injury or
25 potential injury to a client or other party, or causes interference or potential
interference with a legal proceeding.

1 7 0 Violation of Other Duties Owed as a Professional

2 7 1 Disbarment is generally appropriate when a lawyer
3 knowingly engages in conduct that is a violation of a duty owed as a
4 professional with the intent to obtain a benefit for the lawyer or another,
5 and causes serious or potentially serious injury to a client, the public, or the
6 legal system

7 7.2 Suspension is generally appropriate when a lawyer
8 knowingly engages in conduct that is a violation of a duty owed as a
9 professional and causes injury or potential injury to a client, the public, or
10 the legal system.

11 To determine the applicability of these *Standards* in this case, the factors listed in
12 the theoretical framework must be considered

13 **A. The duty violated**

14 Respondent violated his duties to his clients by failing to act with reasonable
15 competence, diligence and promptness in representing clients; failing to abide by client
16 decisions concerning the objectives of representation, failing to communicate and
17 promptly comply with requests for information from clients; charging an unreasonable
18 fee; failing to safeguard clients' property; engaging in conduct prejudicial to the
19 administration of justice; and failing to provide clients with timely written accountings

20 Respondent violated his duty to the legal system and to the profession by failing
21 to furnish information or respond promptly to an inquiry or request from bar counsel for
22 information relevant to the investigation of his conduct or failing to assert the grounds
23 for refusing to do so

24 ///

25 ///

1 **B. The lawyer's mental state**

2 Respondent's conduct was knowing in failing to act with reasonable competence,
3 diligence and promptness in representing clients; failing to abide by client decisions
4 concerning the objectives of representation, failing to communicate and promptly
5 comply with requests for information from clients; charging an unreasonable fee, failing
6 to safeguard clients' property; engaging in conduct prejudicial to the administration of
7 justice, and failing to provide clients with timely written accountings

8
9 Respondent's conduct was knowing in failing to furnish information or respond
10 promptly to an inquiry or request from bar counsel for information relevant to the
11 investigation of his conduct or failing to assert the grounds for refusing to do so.
12

13 **C. The potential or actual injury caused by Respondent's conduct**

14 There was potential and actual injury to clients involved in all of Respondent's
15 rule violations

16 **Count One (File No. 06-1022):** Complainant Bernice Rhoden testified that she
17 has not received an accounting or a refund of all or part of her \$500 retainer. RT, page
18 11, lines 11-19. This was her first experience with a lawyer (RT, page 12, line 4), and
19 "It was not a very good experience " RT, page 15, line 8. Respondent did not perform
20 the services for which he was hired. RT, page 12, line 22-page 13, line 2. She thinks she
21 can obtain adequate services from a paralegal. RT, page 13, line 18- page 14, line 16.
22

23 **Count Two (File No. 06-1589):** Complainant Christine Ann Pace-Morell testified
24 that she paid Respondent a \$5,000 retainer (RT, page 19, line 2). She received "a bill for
25 around \$1,800", including "certain things he did not do " RT, page 20, lines 4-15. She

1 has received no refund of the remainder RT, page 20, lines 9-11. She remains liable to
2 the creditors and beneficiaries for the management of the two estates, but she needs the
3 restitution of the retainer to retain another attorney, so she can protect herself and
4 manage the estates RT, page 21, lines 1-16. Respondent abandoned this Complainant's
5 two probate cases. RT, page 22, line 1,

7 **D. Aggravating and mitigating circumstances**

8 The following factors should be considered in aggravation:

9 *Standard 9.22(b) – Dishonest or selfish motive.* Respondent collected retainers
10 and failed to provide the agreed upon work contracted for or to provide a timely refund
11 of all or part of the retainers paid by the complainants in both counts of this matter.

12 *Standard 9 22(c) – A pattern of misconduct.* Respondent has failed to act with
13 reasonable competence, diligence and promptness in representing clients; failed to abide
14 by client decisions concerning the objectives of representation, failed to communicate
15 and promptly comply with requests for information from clients; charged an
16 unreasonable fee; failed to safeguard clients' property; engaged in conduct prejudicial to
17 the administration of justice, failed to provide clients with timely written accountings,
18 and failed to furnish information or respond promptly to an inquiry or request from bar
19 counsel for information relevant to the investigation of his conduct or failing to assert the
20 grounds for refusing to do so in both counts of this matter.

21 *Standard 9.22(d) – Multiple Offenses* Respondent has failed to act with
22 reasonable competence, diligence and promptness in representing clients; failed to abide
23 by client decisions concerning the objectives of representation, failed to communicate
24
25

1 and promptly comply with requests for information from clients, charged an
2 unreasonable fee, failed to safeguard clients' property; engaged in conduct prejudicial to
3 the administration of justice; failed to provide clients with timely written accountings;
4 and failed to furnish information or respond promptly to an inquiry or request from bar
5 counsel for information relevant to the investigation of his conduct or failing to assert the
6 grounds for refusing to do so in both counts of this matter.
7

8 *Standard 9.22(e) – Bad faith obstruction of the disciplinary proceeding by*
9 intentionally failing to comply with rules or orders of the disciplinary agency
10 Respondent failed to furnish information or respond promptly to an inquiry or request
11 from bar counsel for information relevant to the investigation of his conduct or failing to
12 assert the grounds for refusing to do so in both counts of this matter.
13

14 *Standard 922(h) – Vulnerability of victim* At least one of the complainants in
15 this matter had no previous experience with lawyers until she hired Respondent to
16 represent her in her legal matters. Neither complainant has the knowledge or experience
17 to proceed *pro per* in their respective legal matters.
18

19 *Standard 922(i) – Substantial experience in the practice of law.* Respondent was
20 admitted to practice law in Arizona on July 8, 1999, and has been practicing for eight
21 years.
22

23 *Standard 9 22(j) – Indifference to making restitution* Respondent has made no
24 effort to refund in part of or in whole the retainers paid to him by the complainants in
25 both counts of this matter.

1 The following factor should be considered in mitigation.

2 *Standard 9.32(a) – Absence of a prior disciplinary record*

3 **PROPORTIONALITY ANALYSIS OF ANALOGOUS CASES**

4 To have an effective system of professional sanctions, there must be internal
5 consistency, and it is appropriate to examine sanctions imposed in cases that are factually
6 similar *In re Peasley*, 208 Ariz. 27, 33, 90 P.3d 764, 772 (2004). However, the
7 discipline in each case must be tailored to the individual case, as neither perfection nor
8 absolute uniformity can be achieved. *Id.* at 208 Ariz. at 61, 90 P.3d at 778 (citing *In re*
9 *Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660
10 P.2d 454, 458 (1983))
11

12 The most serious instance of misconduct in this case involves Respondent's
13 abandonment of his client's representations; failure to act with reasonable competence,
14 diligence and promptness in representing clients, failure to abide by client decisions
15 concerning the objectives of representation, failure to communicate and promptly
16 comply with requests for information from clients; charging an unreasonable fee; failure
17 to safeguard clients' property; engaging in conduct prejudicial to the administration of
18 justice; and failing to provide clients with timely written accountings.
19

20 However, Respondent's failures to respond to the State Bar and participate in this
21 formal disciplinary proceeding are also very serious. Disregard of the disciplinary
22 process borders on contempt for the legal system, undermines the profession's efforts at
23 self-regulation, and casts a shadow over the integrity of the justice system. *In re Brown*,
24 184 Ariz. 480, 483, 910 P.2d 631, 634 (1996)
25

1 *In re Rodgers*, File Nos 05-1357, *et al* (2007)¹, is a three-count disbarment case
2 involving misconduct similar to the instant case. The Hearing Officer in *Rodgers* states
3 the following regarding failure to respond and cooperate with the disciplinary process.

4 The difference between Standard 4 41 and 4 42 is whether the harm
5 to which the client was exposed constitutes "serious injury." In light of the
6 ethics violations in addition to those involving lack of diligence plus the
7 numerous and substantial aggravating circumstances, this Hearing Officer
8 believes that it is unnecessary to analyze whether the harm involved in
9 these cases was serious. Most puzzling is Respondent's failure to respond
10 to State Bar inquiries and to participate in these proceedings. If Respondent
11 is incapable or unwilling to comply with the duties he owes in this
disciplinary proceeding (including some explanation for his conduct), it is
logical to conclude ... that Respondent is incapable or unwilling to fulfill
any of the obligations owed by an attorney.

12 Respondent poses a present threat to clients ... Considering the
13 danger posed to clients, and in light of the complete absence of any
14 mitigating circumstances, this Hearing Officer believes disbarment is
15 warranted. Had Respondent offered any credible explanation for his
misconduct, or submitted any evidence in mitigation, a suspension might
have been appropriate.

16 The following cases are instructive concerning the types of misconduct in the
17 instant case:

18 In *In re Levenson*, SB-02-0130-D (2002), Levenson was suspended for one year,
19 placed on probation for two years, and was ordered to pay restitution. Levenson
20 received retainers from clients and then failed to adequately communicate with his
21 clients, failed to act with reasonable diligence on their matters; failed to refund unearned
22

23
24 ¹ This case is currently before the Supreme Court for its review and, final judgment and order.
25 On February 27, 2007, the Hearing Officer filed his report. On June 19, 2007, the Disciplinary
Commission filed its report unanimously recommending acceptance and adoption of the Hearing
Officer's findings of fact, conclusions of law, and recommendation of sanctions.

1 fees to his clients, engaged in conduct that was prejudicial to the administration of justice
2 and failed to promptly respond to the inquires and requests for information from the
3 State Bar during its investigation. Levenson voluntarily ceased practice and entered into
4 a drug rehabilitation facility.

5
6 Three aggravating factors were found in *Levenson*: multiple offenses,
7 vulnerability of victims and substantial experience in the practice of law. Four factors
8 were found in mitigation: absence of a prior disciplinary record, absence of a dishonest
9 or selfish motive, mental disability or impairment, and remorse. Levenson's misconduct
10 violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2, 1.3, 1.4, 1.15, 1.16(d), 3.4, 8.1(b)
11 and 8.4(d), and Rule 51(h) and (i), Ariz. R. Sup. Ct.

12
13 In *In re Willis*, SB-02-0112-D (2002), Willis was suspended for one year. While
14 representing a client in a severance proceeding, he failed to abide by the client's
15 decisions, failed to consult with the client as to the means by which the objectives of the
16 representation were to be pursued, failed to act with reasonable diligence, failed to
17 inform the client as to the status of her matter, failed to appear for scheduled court
18 proceedings, and failed to protect the client's interests while allowing time for the client
19 to employ new counsel.

20
21 Three aggravating factors were found in *Willis*: multiple offenses, vulnerability of
22 the victim, and indifference to making restitution. Four factors were found in mitigation:
23 absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal
24 or emotional problems, and timely good-faith effort to make restitution or to rectify
25 consequences of misconduct. His conduct was deemed admitted by default. In this two-

1 count case Willis's misconduct violated Rule 42, Ariz.R Sup.Ct., specifically ERs 1 2,
2 1.3, 1.4, 1 15(b), 1.16(b) and (d), 3 2, 3.4(c), 8 1(b) and 8 4(d), and Rules 33(d), 44(b),
3 and 51(e), (h) and (i), Ariz.R.Sup.Ct.

4
5 In *In re McCarthy*, SB-01-0121-D (2001), McCarthy was suspended for two
6 years, placed on probation for two years and ordered to pay restitution He failed to
7 communicate or consult with clients, failed to act with reasonable diligence, failed to
8 keep his address current with the Bar's membership office, failed to make reasonable
9 efforts to expedite litigation consistent with his client's interests, failed to return a
10 client's file, failed to attend two court hearings and made misrepresentations to opposing
11 counsel and bar counsel He charged an unreasonable fee, failed to properly withdraw
12 from representation as necessary to protect his client's interests, engaged in conduct that
13 was prejudicial to the administration of justice and failed to respond to the State Bar's
14 investigation.

15
16 Three aggravating factors were found in *McCarthy*: a pattern of misconduct,
17 multiple offenses, and bad-faith obstruction of the disciplinary proceeding by
18 intentionally failing to comply with the rules or orders of the disciplinary agency There
19 was one mitigating factor found absence of a prior disciplinary record. His conduct was
20 deemed admitted by default. In this three-count case, McCarthy's misconduct violated
21 Rule 42, Ariz R.Sup.Ct , specifically ERs 1 2, 1 3, 1.4, 1.5(a), 1 16(d), 3 2, 8.1(b), 8.4(c)
22 and (d), and Rules 31(c)(3) and 51(h) and (i), Ariz R Sup Ct.

23
24 In *In re McGuire*, SB-99-0029-D (1999), McGuire was suspended for two years
25 While representing clients in estate matters, he failed to adequately communicate with

1 his clients, failed to prepare necessary documents, abandoned clients, failed to return
2 unearned retainers and personal property in the form of stock certificates and deeds to his
3 clients, and failed to cooperate with the State Bar

4 Two aggravating factors were found in *McGuire*: multiple offenses and bad-faith
5 obstruction of the disciplinary proceeding by intentionally failing to comply with the
6 rules or orders of the disciplinary agency. There was one mitigating factor found
7 absence of a prior disciplinary record. His conduct was deemed admitted by default. In
8 this four-count case, McGuire's misconduct violated Rule 42, Ariz.R.Sup.Ct.,
9 specifically ERs 1 2, 1 3, 1 4, 1 5, 1 15, 1.16, 8 1(b), 8 4(c), and Rules 31(c)(3) and 51(h)
10 and (i), Ariz.R Sup.Ct.

11 In *In re McFadden*, SB-00-0072-D (2000), McFadden was suspended for two
12 years and ordered to pay restitution. He failed to perform services for which he had been
13 retained, failed to communicate or respond to requests for information from clients,
14 failed to return unearned retainers, failed to return original documents, engaged in the
15 unauthorized practice of law while suspended for non-payment of dues and
16 noncompliance with MCLE requirements. He also failed to respond or cooperate with
17 the State Bar's investigation of the matter.

18 Three aggravating factors were found in *McFadden*: multiple offenses, bad-faith
19 obstruction of the disciplinary proceeding by intentionally failing to comply with rules or
20 orders of the disciplinary agency, and substantial experience in the practice of law. One
21 mitigating factor was found: absence of a prior disciplinary record. His conduct was
22 deemed admitted by default. In this five-count case, McFadden's misconduct violated
23
24
25

1 Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.2, 1.3, 1.4, 5.5, 8.1(b) and 1.16(d), and Rules
2 51(h) and (i), Ariz R Sup Ct

3 In *In re Son*, SB-05-0173-D (2006), Son was disbarred despite the lack of any
4 prior disciplinary record. He abandoned his law practice, failed to perform any
5 contracted services for clients after accepting fees, failed to return unearned retainers and
6 failed to respond or cooperate with the State Bar's investigation. In *Son* as in the instant
7 matter, Son's conduct was deemed admitted by default and he did not appear for the
8 aggravation/mitigation hearing held in his matters.

9 Three aggravating factors were found in *Son*: a pattern of misconduct, multiple
10 offenses, and bad-faith obstruction of the disciplinary proceeding by intentionally failing
11 to comply with rules or orders of the disciplinary agency. One mitigating factor was
12 found: absence of a prior disciplinary record. In this multiple count case Son's
13 misconduct violated Rule 42, Ariz R Sup.Ct., specifically ERs 1.2, 1.3, 1.4, 1.5, 1.15,
14 1.16, 3.2 and 8.1(b), and Rules 53(d) and (f), Ariz R Sup Ct.

15 Of the cases discussed, *McCarthy* is the closest to this case in the findings of fact
16 and conclusions of law.

17 RECOMMENDED SANCTION

18 Based on the findings of fact, conclusions of law, application of the
19 *Standards*, including aggravating and mitigating factors, and a proportionality analysis, I
20 recommend the following disciplinary sanctions be imposed.
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1 1. Respondent should be suspended for two years for violating Rule
2 42, Ariz.R.Sup.Ct , specifically ERs 1 1, 1.2, 1 3, 1.4, 1 5, 1.15, 3.2 and 8 4(d),
3 and Rules 32(c)(3), 43(d)(2) and 53(f), Ariz R.Sup Ct

4 2. Respondent should contact the director of the State Bar's Law
5 Office Management Assistance Program ("LOMAP") with in thirty (30) days of
6 reinstatement Respondent should submit to a LOMAP audit of his office's client
7 communications, billing and accounting practices The director of LOMAP will
8 develop a probation contract.

9 3. Respondent should undergo a Member Assistance Program
10 ("MAP") assessment with in thirty (30) days of reinstatement, and enter into a
11 therapeutic contract incorporating the recommendations of the MAP director or
12 designee

13 4. Respondent should pay restitution in the following amounts to the
14 following individuals

15 Bernice Kay Rhoden \$500.00


16 Tina Ann Pace-Morell \$5,000.00

17 5. Respondent should reimburse the Bar in full for any and all claims
18 paid by the Client Protection Fund, not to exceed the maximum permissible
19 payment of \$100,000.00.

20 6. Respondent should pay all the costs incurred by the State Bar in
21 connection with these proceedings, including the assessment by LOMAP and
22 MAP.

1 The Supreme Court "has long held that 'the objective of disciplinary proceeding
2 is to protect the public, the profession and the administration of justice and not to punish
3 the offender.'" *In re Alcorn*, 202 Ariz. 62, 74, 41 P 3d 600, 612 (2002) (quoting *In re*
4 *Kastensmith*, 101 Ariz 291, 294, 419 P.2d 75, 78 (1966)). Yet another purpose is to
5 instill public confidence in the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881
6 P 2d 352, 361 (1994). The Hearing Officer thinks that the sanctions proposed here are
7 consistent with these principles.
8

9 **DATED** this 13th day of September, 2007.

10 
11 _____
12 Richard N. Goldsmith
13 Hearing Officer
14

15 ORIGINAL of the foregoing has been filed
16 this 13th day of September, 2007, with

17 Disciplinary Clerk of the
18 Supreme Court of Arizona.
19 Certification & Licensing Division
1501 West Washington, Suite 104
Phoenix, Arizona 85007-3329

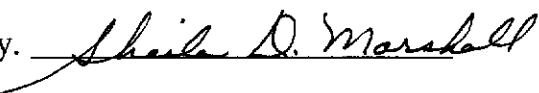
20 COPY of the foregoing mailed
21 this 13th day of September, 2007, to

22 Dion C Ware
23 *Law Offices of Dion Ware*
24 5133 North Central Avenue, Suite 128
25 Phoenix, Arizona 85012-1438
Address Correction Requested
Respondent

1 Dion C Ware
2 26408 North 42nd Drive
3 Glendale, Arizona 85310
4 *Address Correction Requested*
5 Respondent

6 Edward W Parker
7 Bar Counsel
8 State Bar of Arizona
9 4201 N 24th Street, Suite 200
10 Phoenix, Arizona 85016-6288

11 by.

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